

1 DANIEL E. LUNGREN, Attorney General  
of the State of California  
2 RONALD THUNEN  
Deputy Attorney General  
3 455 Golden Gate Avenue, Suite 6200  
San Francisco, California 94102-3658  
4 Telephone: (415) 703-2831

5 Attorneys for Complainant

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8 BEFORE THE BOARD OF PODIATRIC MEDICINE  
MEDICAL BOARD OF CALIFORNIA  
9 DIVISION OF ALLIED HEALTH PROFESSIONS

10 In the Matter of the Accusation ) No. D-4840  
11 Against: )  
12 ) ACCUSATION  
13 RALPH S. BENARD, D.P.M. )  
450 Sutter Street, #1325 )  
14 San Francisco, California 94108 )  
License No. E-739, )  
15 Respondent. )

16 JAMES M. RATHLESBERGER, complainant, charges and  
17 alleges as follows:

18 1. He is the Executive Officer of the Board of  
19 Podiatric Medicine of the Medical Board of California and makes  
20 these charges and allegations in his official capacity and not  
21 otherwise.

22 2. On or about November 11, 1949, respondent Ralph S.  
23 Benard (hereinafter referred to as "respondent") was issued  
24 podiatry certificate number E-739 authorizing him to practice  
25 podiatric medicine. The aforementioned certificate has continued  
26 in full force and effect at all times material hereto and will  
27 expire on December 31, 1992, unless renewed.

1           3.    Business and Professions Code sections 2222, 2227  
2 and 2234 provide, in pertinent part, that the Board of Podiatric  
3 Medicine shall take disciplinary action against any podiatry  
4 certificate holder who is guilty of unprofessional conduct.

5           4.    Business and Professions Code section 2234  
6 provides, in pertinent part, that unprofessional conduct  
7 includes, but is not limited to, the following: . . . (b) Gross  
8 negligence, (c) Repeated negligent acts, and (d) Incompetence.

9           5.    Business and Professions Code section 2497.5(a)  
10 provides that the Board of Podiatric Medicine may request the  
11 administrative law judge, under his or her proposed decision in  
12 resolution of a disciplinary proceeding before the Board, to  
13 direct any licensee found guilty of unprofessional conduct to pay  
14 to the Board a sum not to exceed the actual and reasonable costs  
15 of the investigation and prosecution of the case.

16                   FOR CAUSES FOR DISCIPLINARY ACTION

17           6.    Respondent has been guilty of unprofessional  
18 conduct pursuant to Business and Professions Code sections  
19 2234(b) (gross negligence), 2234(c) (repeated negligent acts) and  
20 2234(d) (incompetence), thereby providing grounds for  
21 disciplinary action under sections 2222, 2227, and 2234 of said  
22 Code, as follows:

23                   Beginning on or about August 23, 1984, and continuing  
24 through December 3, 1984, respondent rendered podiatric care and  
25 treatment to patient E. G.<sup>1/</sup>. Said patient was a twenty-six year

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27           1.    Initials are used in the interests of privacy. The  
full name of the patient will be made known to respondent  
pursuant to a request for discovery under Government Code section

1 old diabetic female who presented a history of insulin dependent  
2 juvenile diabetes that was compounded with peripheral neuropathy  
3 and inability to adequately control her diabetes. Said patient  
4 also presented a history of ulcerations of her feet and of less  
5 than normal circulation.

6 On or about October 23, 1984, and continuing  
7 thereafter, respondent diagnosed, treated, and cared for said  
8 patient in a grossly negligent and/or negligent and/or  
9 incompetent manner, as more particularly alleged as follows:

10 (a) On or about October 23, 1984, respondent  
11 surgically removed Haglund's deformities (heel bumps) in both of  
12 the patient's feet by means of retrocalcaneal exostectomies.  
13 Prior to commencing said surgical procedure, respondent failed to  
14 discuss more conservative treatment options with the patient and  
15 failed to inform her of the risks or possible complications of  
16 this type of procedure, in this case. Thus, any consent to  
17 surgery was not informed consent.

18 (b) In electing to perform said surgical procedure, in  
19 lieu of more conservative treatment options, respondent failed to  
20 consider that this type of surgical procedure was contraindicated  
21 by neurological and vascular deficits present in the patient.

22 (c) In performing said surgical procedures, respondent  
23 failed to require post-operative immobilization of the extremity,  
24 as required by the circumstance of the patient's neuropathy.  
25 Further, performing this procedure on both feet simultaneously  
26 increased the risk of post-surgical complications.

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1 (d) In performing said surgical procedure, respondent  
2 ruptured both of the patient's Achilles tendons; thereafter, he  
3 failed to diagnose said rupture either at the time of surgery or  
4 during follow-up patient examinations on October 29, November 5,  
5 November 9, November 20, and November 30, 1984. During this time  
6 frame, respondent failed to diagnose the Achilles tendon rupture  
7 despite patient complaints of pain, swelling, "pops", and  
8 difficulty walking, and instead instituted and continued a  
9 physical therapy regimen. Based on said failure to diagnose,  
10 appropriate treatment of the patient's bilateral Achilles tendon  
11 rupture was unreasonably delayed, leading to aggravation of the  
12 injury.

13 WHEREFORE, it is prayed that a hearing be held and that  
14 thereafter the Board of Podiatric Medicine issue a decision that  
15 suspends or revokes respondent's podiatry certificate, directs  
16 respondent to pay to the Board a sum not to exceed the actual and  
17 reasonable costs of the investigation and prosecution of this  
18 case, and takes such other action as is deemed just and proper.

19 DATED: July 20, 1992

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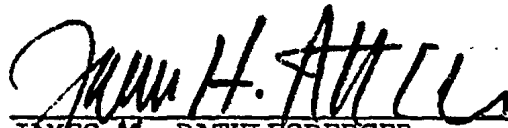
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JAMES H. RATHLESBERGER  
Executive Officer  
Board of Podiatric Medicine  
Medical Board of California

Complainant